

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: August 6, 2007)

DO NOT PUBLISH

THOMAS ODOM,)	
as father of his son,)	
WILLIAM AUSTIN ODOM,)	
)	
Petitioner,)	
)	
v.)	No. 03-1924V
)	Attorneys' Fees; Attorneys' Costs
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS¹

Petitioner, Thomas Odom (Mr. Odom), as father of his son, William Austin Odom (William), seeks an award of attorneys' fees and attorneys' costs for an action that he pursued under the National Vaccine Injury Compensation Program (Program).² Mr. Odom filed his petition for attorneys' fees and attorneys' costs on July 23, 2007, claiming \$82,761.07. *See* Petition for Attorney[s'] Fees and Costs (Fee Petition), filed July 23, 2007, at 4. He requested \$56,151.35 for his current attorney of record, Curtis R. Webb, Esq. (Mr. Webb). *See* Fee Petition at 2. He requested \$8,393.81 for his local counsel, Michael A. Jaynes, Esq. (Mr. Jaynes), who assisted Mr. Webb. *See* Fee Petition at 2, 4. He requested \$18,415.91 for his initial attorney of record, Michael G. McLaren,

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Esq. (Mr. McLaren). *See* Fee Petition at 4. He attested that he did not incur any personal expenses as defined by General Order No. 9. *See* Petitioner's Statement Concerning Costs (Statement), filed July 23, 2007.

Respondent objected informally to several aspects of Mr. Odom's Fee Petition. *See* Joint Status Report (JSR), filed August 2, 2007, at 1. Mr. Odom acceded informally to respondent's objections. *See* JSR at 1. As a consequence, respondent does not contest an award of \$72,963.07 in attorneys' fees and attorneys' costs. *See* JSR at 1. The amount is the sum of \$46,153.35 for Mr. Webb; \$8,393.81 for Mr. Jaynes; and \$18,415.91 for Mr. McLaren. *See* JSR at 1.

Mr. Odom did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" Mr. Odom's "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" Mr. Odom possessed "a reasonable basis for the claim" and that Mr. Odom filed the petition "in good faith." § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master's "discretion is not without limit." *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent "special circumstances," the special master "should ordinarily" award attorneys' fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully Mr. Odom's Fee Petition and the parties' representations in the JSR. The special master determines that Mr. Odom's Fee Petition, *as amended by the JSR*, is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Mr. Odom's favor for \$72,963.07 in attorneys' fees and attorneys' costs. The judgment shall reflect that Mr. Webb may collect \$46,153.35 from Mr. Odom. *See* JSR at 1. In addition, the judgment shall reflect that Mr. Jaynes may collect \$8,393.81 from Mr. Odom. *See* JSR at 1. Finally, the judgment shall reflect that Mr. McLaren may collect \$18,415.91 from Mr. Odom. *See* JSR at 1. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send a courtesy copy of this decision to:

Michael G. McLaren, Esq.
Black & McLaren
530 Oak Court Drive
Suite 360
Memphis, Tennessee 38117

The clerk of court shall send Mr. Odom's copy of this decision to Mr. Odom by overnight express delivery.

John F. Edwards
Special Master